



# FEDERAL ACQUISITION CIRCULAR

January 5, 1994

Number 90-19

Federal Acquisition Circular (FAC) 90-19 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-19 are effective January 1, 1994.



## **FAC 90-19 ITEM SUMMARY**

Federal Acquisition Circular (FAC) 90-19 amends the Federal Acquisition Regulation (FAR) as specified below:

### **Implementation of the North American Free Trade Agreement Act**

This interim rule is being published to implement the North American Free Trade Agreement (NAFTA) Implementation Act in the FAR. It applies to solicitations issued on or after January 1, 1994. The United States Canadian Free Trade Agreement is suspended while NAFTA remains in effect.

NAFTA requires the three NAFTA countries (the United States, Canada, and Mexico) to eliminate "buy national" restrictions on non-defense related purchases by their responsible Federal Governments of goods and services provided by firms in North America. Accordingly, specified agencies must evaluate certain NAFTA country end product offers without regard to the restrictions of the Buy American Act or the Balance of Payments Program. This evaluation method will apply to offers of Canadian end products under supply contracts with an estimated value above \$25,000 and Mexican end products under supply contracts with an estimated value of \$50,000 or more, except for the Department of Energy's Power Marketing Administrations, where the estimated acquisition value is \$250,000 or more. This evaluation method also will apply to construction contracts with an estimated acquisition value of \$6,500,000 or more, except for the Department of Energy's Power Marketing Administration, where the estimated acquisition value is \$8,000,000 or more.

The applicable rule of origin for NAFTA country end products under the agreement is that of "substantial transformation", which means an article that is wholly the growth, product, or manufacture of a NAFTA country or that has been substantially transformed in a NAFTA country into a new and different article may be offered.

This rule also—

(1) Designates NAFTA country end products as eligible products under the Trade Agreements Act, as implemented in Trade Agreements under the FAR;

(2) Adds language to require that, when an overseas procurement for performance overseas is subject to NAFTA, it will be synopsisized in accordance with agency procedures;

(3) Revises the prescriptions for the provisions, Submission of Offers in the English Language, and Submission of Offers in U.S. Currency, to clarify and include NAFTA;

(4) Updates the list of designated countries in FAR 25.401 to add "Portugal" and revise "Upper Volta" to "Burkina Faso";

(5) Includes the new threshold of \$182,000 for application of the Trade Agreements Act and the European Community (EC) Agreement, which is effective January 1, 1994;

(6) Updates the FAR 25.407 list of agencies covered by the Agreements on EC and NAFTA; and

(7) Makes clarifications to the interim rule published in FAC 90-18 (58 FR 31140), at FAR 25.407, to implement the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement and NAFTA.

**Replacement pages:** 5-3 & 5-4, 14-3 & 14-4, 14-19 & 14-20, 15-5 & 15-6, 15-41, 17-7 & 17-8, 25-1 thru 25-16, Contents, Part 52, (pp. 3 & 4), 52-115 thru 52-118.4, and 52-321 thru 52.322.1.



## **FAC 90-19 FILING INSTRUCTIONS**

### Remove Pages

5-3 and 5-4

14-3 and 14-4  
14-19 and 14-20

15-5 and 15-6  
15-41

17-7 and 17-8

25-1 thru 25-15

Contents, Part 52  
(pp. 3 & 4)  
52-115 thru 52-118.3  
52-321 thru 52-322.1

### Insert Pages

5-3 and 5-4

14-3 and 14-4  
14-19 and 14-20

15-5 and 15-6  
15-41

17-7 and 17-8

25-1 thru 25-16

Contents, Part 52  
(pp. 3 & 4)  
52-115 thru 52-118.4  
52-321 thru 52-322.1



clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

#### 14.201-3 Part II—Contract clauses.

*Section I, Contract clauses.* The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to apply to any resulting contract, if these clauses are not required to be included in any other section of the uniform contract format.

#### 14.201-4 Part III—Documents, exhibits, and other attachments.

*Section J, List of documents, exhibits, and other attachments.* The contracting officer shall list the title, date, and number of pages for each attached document.

#### 14.201-5 Part IV—Representations and instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of bidders.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by bidders.

(b) *Section L, Instructions, conditions, and notices to bidders.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide bidders. Invitations shall include the time and place for bid openings, and shall advise bidders that bids will be evaluated without discussions (see 52.214-10 and, for construction contracts, 52.214-19).

(c) *Section M, Evaluation factors for award.* Identify the price related factors other than the bid price that will be considered in evaluating bids and awarding the contract. See 14.201-8.

#### 14.201-6 Solicitation provisions.

(a) The provisions prescribed in this subsection are limited to subjects that are general in nature, do not come under other subject areas of the FAR, and pertain to the preparation and submission of bids.

(b) The contracting officer shall insert in all invitations for bids the provisions at—

(1) 52.214-1, Solicitation Definitions—Sealed Bidding;

(2) 52.214-2, Type of Business Organization—Sealed Bidding;

(3) 52.214-3, Amendments to Invitations for Bids; and

(4) 52.214-4, False Statements in Bids.

(c) The contracting officer shall insert the following provisions in invitations for bids:

(1) 52.214-5, Submission of Bids.

(2) 52.214-6, Explanation to Prospective Bidders.

(3) 52.214-7, Late Submissions, Modifications, and Withdrawals of Bids, for solicitations issued in the United States and Canada for submission of bids to a

contracting office in the United States or Canada.

(4) 52.214-32, Late Submissions, Modifications, and Withdrawals of Bids (Overseas), for solicitations under which bids are to be submitted to a contracting office outside the United States or Canada.

(d) Reserved.

(e) The contracting officer shall insert in invitations for bids, except those for construction, the provisions at—

(1) 52.214-9, Failure to Submit Bid; and

(2) 52.214-10, Contract Award—Sealed Bidding.

(f) The contracting officer shall insert in invitations for bids to which the uniform contract format applies, the provision at 52.214-12, Preparation of Bids.

(g)(1) The contracting officer shall insert the provision at 52.214-13, Telegraphic Bids, in invitations for bids if the contracting officer decides to authorize telegraphic bids.

(2) The contracting officer shall insert the basic provision with its Alternate I in invitations for bids that are for perishable subsistence, and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

(h) The contracting officer shall insert the provision at 52.214-14, Place of Performance—Sealed Bidding, in invitations for bids except those in which the place of performance is specified by the Government.

(i) The contracting officer shall insert the provision at 52.214-15, Period for Acceptance of Bids, in invitations for bids (IFB's) that are not issued on SF 33 or SF 1447 except IFB's (1) for construction work or (2) in which the Government specifies a minimum acceptance period.

(j) The contracting officer shall insert the provision at 52.214-16, Minimum Bid Acceptance Period, in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified.

(k) The contracting officer shall insert the provision at 52.214-17, Affiliated Bidders, in invitations for bids if the contracting officer determines that disclosure of affiliated bidders is necessary to prevent practices prejudicial to full and open competition, such as improper multiple bidding.

(l) The contracting officer shall insert the provision at 52.214-18, Preparation of Bids—Construction, in invitations for bids for construction work.

(m) The contracting officer shall insert the provision at 52.214-19, Contract Award—Sealed Bidding—Construction, in all invitations for bids for construction work.

(n) Use of the provision at 52.215-4, Notice of Possible Standardization, may be appropriate in invitations for bids involving supplies that are likely to become standardized. See 15.407(b) regarding use of this provision in sealed bidding.

(o)(1) The contracting officer shall insert the provision at 52.214-20, Bid Samples, in invitations for bids if bid samples are required.

(2) If it appears that the conditions in 14.202-4(f)(1) will apply and the contracting officer anticipates granting

waivers thereunder and—

(i) If the nature of the required product *does not* necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, the contracting officer shall use the provision with its Alternate I; or

(ii) If the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, the contracting officer shall use the provision with its Alternate II.

(3) See 14.202-4(f)(2) regarding waiving the requirement for all bidders.

(p)(1) The contracting officer shall insert the provision at 52.214-21, Descriptive Literature, in invitations for bids if (i) descriptive literature is required to evaluate the technical acceptability of an offered product and (ii) the required information will not be readily available unless it is submitted by bidders.

(2) Use the basic clause with its Alternate I if the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation.

(3) See 14.202-5(e)(2) regarding waiving the requirement for all bidders.

(q) The contracting officer shall insert the provision at 52.214-22, Evaluation of Bids for Multiple Awards, in invitations for bids if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(r) The contracting officer shall insert the provision at 52.214-23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding issued in the United States and Canada for submission of technical proposals to a contracting office in the United States or Canada.

(s) The contracting officer shall insert the provision at 52.214-24, Multiple Technical Proposals, in solicitations for technical proposals in step one of two-step sealed bidding if the contracting officer permits the submission of multiple technical proposals.

(t) The contracting officer shall insert the provision at 52.214-25, Step Two of Two-Step Sealed Bidding, in invitations for bids issued under step two of two-step sealed bidding.

(u) The contracting officer shall insert the provision at 52.214-30, Annual Representations and Certifications—Sealed Bidding, in invitations for bids if annual representations and certifications are used (see 14.213).

(v) The contracting officer shall insert the provision at 52.214-33, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas), in solicitations for technical proposals in step one of two-step sealed bidding under which technical proposals are to be submitted to a contracting office out-

side the United States or Canada.

(w) The contracting officer shall insert the provision at 52.214-31, Facsimile Bids, in solicitations if facsimile bids are authorized (see 14.202-7).

(x) The provision at 52.214-34, Submission of Offers in the English Language, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(y) The provision at 52.214-35, Submission of Offers in U.S. Currency, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

#### 14.201-7 Contract clauses.

(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-26, Audit—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed \$500,000.

(b)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed \$500,000.

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(c)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed \$500,000.

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(d) When contracting by sealed bidding the contracting officer shall insert the clause at 52.214-29, Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies.

#### 14.201-8 Price related factors.

The factors set forth in paragraphs (a) through (e) below may be applicable in evaluation of bids for award and shall

## PART 14—SEALED BIDDING

14.408-2

ed as nonresponsive.

(3) When a bid indicates deletion of the economic price adjustment clause, the bid shall be rejected as non-responsive since the downward economic price adjustment provisions are thereby limited.

(4) When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

**14.407-5 Reserved.****14.407-6 Equal low bids.**

(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

(1) Small business concerns that are also labor surplus area concerns.

(2) Other small business concerns.

(3) Other business concerns that are also labor surplus area concerns.

(4) Other business concerns.

(b) If two or more bidders still remain equally eligible after application of paragraph (a) of this section, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

(c) When an award is to be made by using the priorities under this 14.407-6, the contracting officer shall include a written agreement in the contract that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

**14.407-7 Documentation of award.**

(a) The contracting officer shall document compliance with 14.103-2 in the contract file.

(b) The documentation shall either state that the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award.

(c) When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

**14.407-8 Protests against award.**

See Subpart 33.1, Protests.

**14.408 Information to bidders.****14.408-1 Award of unclassified contracts.**

(a)(1) The contracting officer shall as a minimum (sub-

ject to any restrictions in Subpart 9.4)—

(i) Notify unsuccessful bidders promptly that their bids were not accepted;

(ii) Extend appreciation for the interest the unsuccessful bidders have shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall promptly, but in no event later than 7 working days after award, give unsuccessful offerors from designated or NAFTA countries written notice stating—

(i) That their offers were not accepted;

(ii) That a contract has been awarded;

(iii) The dollar amount of the successful offer; and

(iv) The name and address of the successful offeror.

(b) Notification to unsuccessful bidders may be oral or in writing through the use of a form postal card or other appropriate means.

(c) Should additional information be requested, the contracting officer shall provide the unsuccessful bidders with the name and address of the successful bidder, the contract price, and the location where a copy of the abstract of offers is available for inspection. However, when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office, only information concerning location of the abstract of offers need be given.

(d) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.

(e) Requests for records shall be governed by agency regulations implementing Subpart 24.2.

**14.408-2 Award of classified contracts.**

In addition to 14.408-1, if classified information was furnished or created in connection with the solicitation, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. Information regarding a classified award shall not be furnished by telephone.

**SUBPART 14.5—TWO-STEP SEALED BIDDING****14.501 General.**

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.1.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Subparts 14.3 and 14.4.

**14.502 Conditions for use.**

(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) Sufficient time will be available for use of the two-step method.

(5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following precludes the use of two-step sealed bidding:

(1) Multi-year contracting.

(2) Government-owned facilities or special tooling to be made available to the successful bidder.

(3) A total small business and/or labor surplus area

set-aside (see 19.502-2 and 20.201).

(4) A first or subsequent production quantity is being acquired under a performance specification.

**14.503 Procedures.****14.503-1 Step one.**

(a) Requests for technical proposals shall be distributed in accordance with 14.203-1. In addition, the request shall be synopsisized in accordance with Part 5. The request must include, as a minimum, the following:

(1) A description of the supplies or services required.

(2) A statement of intent to use the two-step method.

(3) The requirements of the technical proposal.

(4) The evaluation criteria, to include all factors and any significant subfactors.

(5) A statement that the technical proposals shall not include prices or pricing information.

(6) The date, or date and hour, by which the proposal must be received (see 14.201-6(r)).

(7) A statement that (i) in the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and (ii) each bid in the second step must be based on the bidder's own technical proposals.

(8) A statement that (i) offerors should submit proposals that are acceptable without additional explanation or information, (ii) the Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted, and (iii) the Government may proceed with the second step without requesting further information from any offeror; however, the Government may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors.

(9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized, see 14.201-6(s).

(b) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is not

by this regulation and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format.

(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-33, Order of Precedence, in solicitations and contracts to which the uniform contract format applies.

(c) Any alteration pertaining to the contract shall be included in this section as part of the clause at 52.252-4, Alterations in Contract. See Part 52, Solicitation Provisions and Contract Clauses.

#### 15.406-4 Part III—List of documents, exhibits, and other attachments.

*Section J, List of attachments.* The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment.

#### 15.406-5 Part IV—Representations and instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors or quoters.

(b) *Section L, Instructions, conditions, and notices to offerors or quoters.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or quoters in preparing proposals or quotations. Any alteration pertaining to the solicitation shall be included in this section as part of the provision at 52.252-3, Alterations in Solicitation. Prospective offerors or quoters may be instructed to submit technical proposals in severable parts to meet agency requirements. The severable parts should provide for separation of technical and cost or pricing data. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, and (4) cost or pricing data.

(c) *Section M, Evaluation factors for award.* Identify all factors, including cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors that will be considered in awarding the contract (see 15.605(e) and (f) and the multiple award provision at 52.215-34) and state the relative importance the Government places on those evaluation factors and subfactors.

#### 15.407 Solicitation provisions.

(a) "Solicitations," as used in this section, means requests for proposals (RFP's) and requests for quotations (RFQ's) other than those excluded by 15.401 and those for information or planning purposes. See 15.405-2 for the solicitation provision used with solicitations for infor-

mation or planning purposes.

(b) The contracting officer may, upon the approval of the chief of the contracting office, insert the provision at 52.215-4, Notice of Possible Standardization, in solicitations for supplies that subsequently might be standardized. See 14.201-6(n) regarding use of the provision in invitations for bids.

(c) The contracting officer shall insert in solicitations the provisions at—

- (1) 52.215-5, Solicitation Definitions;
  - (2) 52.215-6, Type of Business Organization;
  - (3) 52.215-7, Unnecessarily Elaborate Proposals or Quotations;
  - (4) 52.215-8, Amendments to Solicitations;
  - (5) 52.215-9, Submission of Offers;
  - (6) 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, for solicitations issued in the United States and Canada for submission of offers to a contracting office in the United States or Canada;
  - (7) 52.215-11, Authorized Negotiators;
  - (8) 52.215-12, Restriction on Disclosure and Use of Data; and
  - (9) 52.215-36, Late Submissions, Modifications, and Withdrawals of Proposals (Overseas), for solicitations under which offers are to be submitted to a contracting office outside the United States or Canada.
- (d) The contracting officer shall—
- (1) Insert in RFP's for other than construction the provision at 52.215-13, Preparation of Offers;
  - (2) Insert in RFP's the provision at 52.215-14, Explanation to Prospective Offerors;
  - (3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer; and
  - (4) Insert in RFP's the provision at 52.215-16, Contract Award.

(i) Civilian agencies, other than the Coast Guard and the National Aeronautics and Space Administration, shall use the basic provision as stated.

(ii) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I.

(iii) The Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration shall use the basic provision with its Alternate II if the contracting officer intends that proposals will be evaluated with, and award made after, discussions with the offerors.

(iv) The Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration shall use the basic provision with its Alternate III if the contracting officer intends that proposals will be evaluated, and award made, without discussions with offerors.

(e)(1) The contracting officer shall insert the provision at 52.215-17, Telegraphic Proposals, in solicitations that  
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authorize telegraphic proposals or quotations.

(2) The contracting officer shall insert the basic provision with its Alternate I in solicitations that are for perishable subsistence and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

(f) The contracting officer shall insert the provision at 52.215-19, Period for Acceptance of Offer, in RFP's that are not issued on SF 33 or SF 1447, except those (1) for construction work or (2) in which the Government specifies a minimum acceptance period.

(g) The contracting officer shall insert the provision at 52.215-20, Place of Performance, in solicitations except those in which the place of performance is specified by the Government.

(h) The contracting officer shall insert the provision at 52.215-34, Evaluation of Offers for Multiple Awards, in requests for proposals if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(i) The contracting officer shall insert the provision at 52.215-35, Annual Representations and Certifications—Negotiation, in requests for proposals if annual representations and certifications are utilized (see 14.213).

(j) The contracting officer shall insert the provision at 52.215-18, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.402(i)).

(k) The contracting officer shall insert in RFP's for construction the provision at 52.215-38, Preparation of Offers—Construction.

(l) The provision at 52.214-34, Submission of Offers in the English Language, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(m) The provision at 52.214-35, Submission of Offers in U.S. Currency, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

#### 15.408 Issuing solicitations.

(a) The contracting officer shall issue unclassified solicitations to potential sources in conformance with the policy and procedures in Parts 5 and 6.

(b) Solicitations involving classified information shall be handled as prescribed by agency regulations.

(c) If the contracting office is located in the United States and the security classification permits, any solicitation or related correspondence sent to a foreign address shall be sent by international air mail. Similarly, if the security classification permits, contracting offices located outside the United States shall use international air mail in appropriate circumstances.

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(d) A master solicitation may be used for negotiated acquisitions, subject to the criteria and procedures in 14.203-3.

#### 15.409 Pre-proposal conferences.

(a) A pre-proposal conference may be held to brief prospective offerors after a solicitation has been issued but before offers are submitted. Generally, the Government uses these conferences in complex negotiated acquisitions to explain or clarify complicated specifications and requirements.

(b) The contracting officer shall decide if a pre-proposal conference is required and make the necessary arrangements, including the following:

(1) If notice was not in the solicitation, give all prospective offerors who received the solicitation adequate notice of the time, place, nature, and scope of the conference.

(2) If time allows, request prospective offerors to submit written questions in advance. Prepared answers can then be delivered during the conference.

(3) Arrange for technical and legal personnel to attend the conference, if appropriate.

(c) The contracting officer or a designated representative shall conduct the pre-proposal conference, furnish all prospective offerors identical information concerning the proposed acquisition, make a complete record of the conference, and promptly furnish a copy of that record to all prospective offerors. Conferees shall be advised that—

(1) Remarks and explanations at the conference shall not qualify the terms of the solicitation; and

(2) Terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

#### 15.410 Amendment of solicitations before closing date.

(a) After issuance of a solicitation, but before the date set for receipt of proposals, it may be necessary to (1) make changes to the solicitation, including, but not limited to, significant changes in quantity, specifications, or delivery schedules, (2) correct defects or ambiguities, or (3) change the closing date for receipt of proposals. Standard Form 30, Amendment of Solicitation/Modification of Contract (53.301-30), shall be used for amending a request for proposals (RFP).

(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by telegram or telephone of an extension of the closing date, and the notification shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.



## PART 15—CONTRACTING BY NEGOTIATION

15.1005

SUBPART 15.10—PREAWARD, AWARD, AND  
POSTAWARD NOTIFICATIONS, PROTESTS,  
AND MISTAKES

## 15.1001 Notifications to unsuccessful offerors.

(a) *General.* The contracting officer shall promptly notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, unless disclosure might prejudice the Government's interest.

(b) *Preaward notices.* (1) When the proposal evaluation period for a solicitation estimated to exceed the small purchase limitation in part 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered.

(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(c) *Postaward notices.* (1) Promptly after award of contracts resulting from solicitations exceeding the small purchase limitation in Part 13, the contracting officer shall notify unsuccessful offerors in writing, unless preaward notice was given under paragraph (b) of this section. The notice shall include—

- (i) The number of offerors solicited;
- (ii) The number of proposals received;
- (iii) The name and address of each offeror receiving an award;
- (iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and

(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information in (iv) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement

(NAFTA) Implementation Act (see 25.405(e)), the information in paragraph (c)(1) of this section shall be provided to unsuccessful offerors from designated or NAFTA countries promptly, but in no event later than seven working days after contract award.

(3) Upon request, the contracting officer shall furnish the information described in 15.1001(c)(1)(i) through (v) to unsuccessful offerors in solicitations not exceeding the small purchase limitation in Part 13.

## 15.1002 Notification to successful offeror.

The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written notice of the award to that offeror (but see 15.608(b)). When an award is made to an offeror for less than all of the items that may be awarded to that offeror and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

## 15.1003 Debriefing of unsuccessful offerors.

(a) When a contract is awarded on the basis of other than price alone (see Subpart 15.6), unsuccessful offerors, upon their written request, shall be debriefed as soon as possible and furnished the basis for the selection decision and contract award.

(b) Debriefing information shall include the Government's evaluation of the significant weak or deficient factors in the proposal; however, point-by-point comparisons with other offerors' proposals shall not be made. Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring. Moreover, debriefing shall not reveal any information that is not releasable under the Freedom of Information Act; for example—

- (1) Trade secrets;
  - (2) Privileged or confidential manufacturing processes and techniques; and
  - (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.
- (c) The contracting officer shall include a summary of the debriefing in the contract file.

## 15.1004 Protests against award.

Protests against award in negotiated acquisitions shall be treated substantially the same as in sealed bidding (see Subpart 33.1).

## 15.1005 Discovery of mistakes.

For treatment of mistakes in an offeror's proposal that are discovered before award, see 15.607. Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with 14.406-4.



(3) Applicable solicitation schedule notes, essentially as follows:

(i) "NOTE 1: Offeror will submit unit price for the single year requirement, which shall apply to all quantities up to the single year maximum in the event that a 1-year requirements contract is awarded only for the single-year requirement. If a contract is awarded only on the first program year requirements, such a contract will not provide for any cancellation charges."

(ii) "NOTE 2: Offeror will submit a single unit price, inclusive of nonrecurring costs, to be entered on the schedule as the BEQ price for each program year, applicable to quantities within and up to the aggregate BEQ, under multiyear procedures."

(iii) "NOTE 3: Offerors will also submit a single unit price, exclusive of nonrecurring costs amortized over the BEQ, applicable only to quantities ordered in excess of the aggregate BEQ and up to the total multiyear contract maximum quantity."

(4) A statement that quantities ordered in excess of the program year BEQ but which do not exceed the aggregate BEQ will be priced inclusive of nonrecurring costs.

(5) A statement that evaluation will be on the basis of the lowest unit price offered for the first program year BEQ against the lowest unit price offered for the aggregate BEQ.

(6) A statement setting forth a single cancellation ceiling, applicable only in the event of contract award on the multiyear basis.

(7) A notification that the amount of cancellation charges payable shall be determined on the basis of the ratio between the total quantity ordered at the time of cancellation and the aggregate contract BEQ.

(8) A date of specific time period for Government notification to the contractor as to the availability or nonavailability of funds and any anticipated significant changes in the BEQ for the succeeding program year.

(9) A statement that in the event the contract is awarded for more than 1 program year, the contract will include the clause at 52.217-2, Cancellation of Items, with its Alternate I.

#### 17.105 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts when a multiyear contract or a multiyear modified-requirements contract is contemplated:

(1) The clause at 52.217-1, Limitation of Price and Contractor Obligations.

(2) The clause at 52.217-2, Cancellation of Items. If a multiyear modified requirements contract is awarded for more than 1 program year, the contracting officer shall use the clause with its Alternate I.

(b) For purposes of determining the provisions and

clauses applicable to solicitations and contracts under the procedure in 17.104-4 above, prescriptions pertaining to requirements contracts are applicable (see 16.505(a), 16.505(b), and 16.505(d)).

(c) Provisions and clauses prescribed elsewhere in the FAR shall also be used when the conditions specified in their prescriptions are applicable.

### SUBPART 17.2—OPTIONS

#### 17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; (c) research and development services; (d) automatic data processing (ADP) equipment systems; and (e) telecommunications equipment and services. However, it does not preclude the use of options in those contracts.

#### 17.201 Definition.

"Option" means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

#### 17.202 Use of options.

(a) Subject to the limitations of paragraphs (b) and (c) below, the contracting officer may include options in contracts when it is in the Government's interest. (See 17.207(f) with regard to the exercise of options.)

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

(1) The foreseeable requirements involve—

(i) Minimum economic quantities (i.e., quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery; or

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

(c) The contracting officer shall not employ options if—

(1) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable;

(2) Market prices for the supplies or services involved are likely to change substantially; or

(3) The option represents known firm requirements (FAC 90-19) 17-7

for which funds are available unless (i) the basic quantity is a learning or testing quantity and (ii) competition for the option is impracticable once the initial contract is awarded.

(d) In recognition of (1) the Government's need in certain service contracts for continuity of operations and (2) the potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

#### 17.203 Solicitations.

(a) Solicitations shall include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 17.208).

(b) Solicitations containing option provisions shall state the basis of evaluation, either exclusive or inclusive of the option and, when appropriate, shall inform offerors that it is anticipated that the Government may exercise the option at time of award.

(c) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award (see 17.206).

(d) Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the dates when ordered.

(e) If it is anticipated that the Government may exercise an option at the time of award and if the condition specified in paragraph (d) above applies, solicitations shall specify the price at which the Government will evaluate the option (highest option price offered or option price for specified requirements).

(f) Solicitations may, in unusual circumstances, require that options be offered at prices no higher than those for the initial requirement; e.g., when (1) the option cannot be evaluated under 17.206, or (2) future competition for the option is impracticable.

(g) Solicitations that require the offering of an option at prices no higher than those for the initial requirement shall—

(1) Specify that the Government will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and

(2) Limit option quantities for additional supplies to not more than 50 percent of the initial quantity of the same contract line item. In unusual circumstances, an authorized person at a level above the contracting officer may approve a greater percentage of quantity.

(h) See 25.402(a)(5) regarding use of options in calculating the estimated contract amount for application of the Trade Agreements Act and North American Free Trade Agreement thresholds.

#### 17.204 Contracts.

(a) The contract shall specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any extension.

(b) The contract shall state the period within which the option may be exercised.

(c) The period shall be set so as to provide the contractor adequate lead time to ensure continuous production.

(d) The period may extend beyond the contract completion date for service contracts. This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.

(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. Statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

(f) Contracts may express options for increased quantities of supplies or services in terms of (1) percentage of specific line items, (2) increase in specific line items, or (3) additional numbered line items identified as the option.

(g) Contracts may express extensions of the term of the contract as an amended completion date or as additional time for performance; e.g., days, weeks, or months.

#### 17.205 Documentation.

(a) The contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under 17.203(g); and shall include the justification document in the contract file.

(b) Any justifications and approvals and any determination and findings required by Part 6 shall specify both the basic requirement and the increase permitted by the option.

#### 17.206 Evaluation.

(a) In awarding the basic contract, the contracting officer shall, except as provided in paragraph (b) of this section, evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the Government is likely to exercise the options. (See 17.208.)

(b) The contracting officer need not evaluate offers for any option quantities when it is determined that evaluation would not be in the best interests of the Government and this determination is approved at a level above the contracting officer. An example of a circumstance that may support a determination not to evaluate offers for option quantities is when there is a reasonable certainty that funds will be unavailable to permit exercise of the option.

#### 17.207 Exercise of options.

(a) When exercising an option, the contracting officer

## PART 25

### FOREIGN ACQUISITION

#### 25.000 Scope of part.

Except as provided in agency regulations, this part provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services, and construction materials. This part also provides policies and procedures for the application to foreign acquisitions of international agreements, customs and duties, the clause at 52.215-1, Examination of Records by Comptroller General, and use of local currency for payment.

#### SUBPART 25.1—BUY AMERICAN ACT— SUPPLIES

#### 25.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10) and Executive Order 10582, December 17, 1954 (as amended). It applies to supply contracts and to contracts for services that involve the furnishing of supplies.

#### 25.101 Definitions.

“Civil aircraft and related articles,” as used in this subpart, means (a) all aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard; (b) the engines (and parts and components for incorporation into the engines) of these aircraft; (c) any other parts, components, and subassemblies for incorporation into the aircraft; and (d) any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act of 1979.

“Components,” as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this subpart, means (a) an unmanufactured end product mined or produced in the United States, or (b) an end product manufactured in the United States, if the cost of its components mined, pro-

duced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“Domestic offer,” as used in this subpart, means an offered price for a domestic end product, including transportation to destination.

“End product,” as used in this subpart, means those articles, materials, and supplies to be acquired for public use under the contract.

“Foreign end product,” as used in this subpart, means an end product other than a domestic end product.

“Foreign offer,” as used in this subpart, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

“Instrumentality,” as used in this subpart, does not include an agency or division of the government of a country, but may be construed to include arrangements such as the European Economic Community.

“United States,” as used in this subpart, means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

#### 25.102 Policy.

(a) The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

- (1) For use outside the United States;
- (2) For which the cost would be unreasonable, as determined in accordance with 25.105;
- (3) For which the agency head determines that domestic preference would be inconsistent with the public interest;
- (4) That are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities, of a satisfactory quality (see 25.108); or
- (5) Purchased specifically for commissary resale.

(b) Unless agency regulation prescribes otherwise—

(1) The contracting officer may make a nonavailability determination under 25.102(a)(4) for an acquisition if—

(i) The acquisition was conducted by full and open competition;

(ii) The acquisition was synopsisized under 5.201; and,

(iii) No offer for a domestic end product was received; or

(2) The head of the contracting activity or designee may make a nonavailability determination under 25.102(a)(4) for any circumstance other than that specified in paragraph (b)(1) of this section.

#### 25.103 Agreements with certain foreign governments.

The Department of Defense and the National Aeronautics and Space Administration (NASA) have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to their acquisitions for public use of certain supplies mined, produced, or manufactured in certain foreign countries. Detailed procedures implementing these determinations are in the Department of Defense (DoD) Federal Acquisition Regulation Supplement and the NASA Federal Acquisition Regulation Supplement.

#### 25.104 Acquiring civil aircraft and related articles.

(a) The U.S. Trade Representative, on February 19, 1980 (45 FR 12349, February 25, 1980), waived applying the Buy American Act to acquiring civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft. The representative acted under the authority of section 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2513). Countries and instrumentalities that are parties to the agreement (as of January 1, 1986) are Austria, Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom), Japan, Norway, Romania, Sweden, and Switzerland. The Office of the U.S. Trade Representative, Washington, DC 20506, can provide information on changes to the list of parties to the agreement made since January 1, 1986.

(b) For the purpose of this waiver, an article is a product of a country or instrumentality only if—

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

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(c) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

#### 25.105 Evaluating offers.

(a) Unless the agency head determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see 25.101), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or

(2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.

(b) The evaluation in paragraph (a) of this section shall be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation.

(c) If an award of more than \$250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the agency head shall decide whether award to the domestic concern would involve unreasonable cost.

(d) The evaluation in paragraph (a) of this section shall not be applied to offers of Israeli end products at or above \$50,000 (see 25.402(a)(2)).

(e) The evaluation in paragraph (a) of this section shall not be applied to offers of Canadian end products above \$25,000 (see 25.402(a)(3)). For the definition of "Canadian end product," see 25.401.

#### 25.106 Reserved.

#### 25.107 Acquisition from or through other Government agencies.

The General Services Administration is responsible for compliance with the Buy American Act for—

(a) Foreign end products acquired for stock in GSA stores depots;

(b) Direct purchases for other agencies; and

(c) Establishing mandatory Federal Supply Schedules that do not include a domestic end product.

#### 25.108 Excepted articles, materials, and supplies.

(a) One or more agencies have determined that the articles, materials, and supplies listed in paragraph (d) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The list in paragraph (d) of this section is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the agency concerned has made a determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

(b) Agencies making determinations under 25.102(a)(4) or 25.202(a)(3) for unlisted articles, materials, or supplies shall submit a copy of these determinations to the appropriate FAR Council for possible addition of items to the list.

(c) Agencies shall provide detailed information to the appropriate FAR Council if any item on the list becomes reasonably available in sufficient commercial quantities of a satisfactory quality.

(d)(1) The excepted articles, materials, and supplies are as follows:

- Acetylene, black.
- Agar, bulk.
- Anise.
- Antimony, as metal or oxide.
- Asbestos, amosite, chrysotile, and crocidolite.
- Bananas.
- Bauxite.
- Beef, corned, canned.
- Beef extract.
- Bephenium hydroxynapthoate.
- Bismuth.
- Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
- Brazil nuts, unroasted.
- Cadmium, ores and flue dust.
- Calcium cyanamide.
- Capers.
- Cashew nuts.
- Castor beans and castor oil.
- Chalk, English.
- Chestnuts.
- Chicle.
- Chrome ore or chromite.
- Cinchona bark.
- Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
- Cocoa beans.
- Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
- Coffee, raw or green bean.
- Colchicine alkaloid, raw.
- Copra.
- Cork, wood or bark and waste.
- Cover glass, microscope slide.
- Crane rail (85-pound per foot).
- Cryolite, natural.
- Dammar gum.
- Diamonds, industrial, stones and abrasives.
- Emetine, bulk.
- Ergot, crude.
- Erythrityl tetranitrate.
- Fair linen, altar.

Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.

Goat and kidskins.

Graphite, natural, crystalline, crucible grade.

Hand file sets (Swiss pattern).

Handsewing needles.

Hemp yarn.

Hog bristles for brushes.

Hyoscine, bulk.

Ipecac, root.

Iodine, crude.

Kaurigum.

Lac.

Leather, sheepskin, hair type.

Lavender oil.

Manganese.

Menthol, natural bulk.

Mica.

Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).

Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.

Nitroguanidine (also known as picrite).

Nux vomica, crude.

Oiticica oil.

Olive oil.

Olives (green), pitted or unpitted, or stuffed, in bulk.

Opium, crude.

Oranges, mandarin, canned.

Petroleum, crude oil, unfinished oils, and finished products (see definitions of petroleum terms in subparagraph (d)(2) of this section).

Pine needle oil.

Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.

Pyrethrum flowers.

Quartz crystals.

Quebracho.

Quinidine.

Quinine.

Rabbit fur felt.

Radium salts, source and special nuclear materials.

Rosettes.

Rubber, crude and latex.

Rutile.

Santonin, crude.

Secretin.

Shellac.

Silk, raw and unmanufactured.

Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.

Spices and herbs, in bulk.

Steel conduit (5" and 6").

Sugars, raw.  
 Swords and scabbards.  
 Talc, block, steatite.  
 Tantalum.  
 Tapioca flour and cassava.  
 Tartar, crude; tartaric acid and cream of tartar in bulk.  
 Tea in bulk.  
 Thread, metallic (gold).  
 Thyme oil.  
 Tin in bars, blocks, and pigs.  
 Triprolidine hydrochloride.  
 Tungsten.  
 Vanilla beans.  
 Venom, cobra.  
 Wax, carnauba.  
 Wire glass

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

Yam, 50 Denier rayon.

(2) As used in subparagraph (d)(1) of this section, petroleum terms are defined as follows:

(i) "Crude oil" means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporious phase in a reservoir and that are not natural gas products.

(ii) "Finished products" means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

(A) "Asphalt"—a solid or semi-solid cementitious material that (1) gradually liquefies when heated, (2) has bitumens as its predominating constituents, and (3) is obtained in refining crude oil.

(B) "Fuel oil"—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

(C) "Gasoline"—a refined petroleum distillate that, by its composition, is suitable for use as a carburant in internal combustion engines.

(D) "Jet fuel"—a refined petroleum distillate used to fuel jet propulsion engines.

(E) "Liquefied gases"—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

(F) "Lubricating oil"—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.

(G) "Naphtha"—a refined petroleum distillate falling within a distillation range overlapping the

higher gasoline and the lower kerosenes.

(H) "Natural gas products"—liquids (under atmospheric conditions), including natural gasoline, that—

(1) Are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of these processes, from mixtures of hydrocarbons that existed in a vaporious phase in a reservoir, and

(2) When recovered and without processing in a refinery, definitions of products contained in (d)(2)(ii), (B), (C), (D), and (G) of this section.

(I) "Residual fuel oil"—a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil-F-859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

(iii) "Unfinished oils" means one or more of the petroleum oils listed in subdivision (ii) of this section, or a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

#### 25.109 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.225-1, Buy American Certificate, in solicitations where the clause at 52.225-3 is used.

(b) When quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see 25.108 and Subpart 25.4), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see 25.105).

(c) The contracting officer shall insert the provision at 52.225-2, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for the acquisition of civil aircraft and related articles.

(d) Except as provided in paragraph (g) of this section, or when the clause prescribed by paragraph (f) is used, or when the clause prescribed in 25.408(a)(4) is used, the contracting officer shall insert the clause at 52.225-3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States.

(e) The contracting officer shall insert the provision at 52.225-16, Buy American Act — Supplies under European Community Agreement Certificate, in solicitations where the clause at 52.225-17, Buy American Act — Supplies under European Community Agreement, is used.

(f) Except as provided in paragraph (g) of this section, the contracting officer shall insert the clause at 52.225-17, Buy American Act—Supplies under European Community Agreement, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of sup-



plies when the estimated acquisition value meets or exceeds \$182,000 for the agencies listed at FAR 25.407, except for the Power Marketing Administrations' segment of the Department of Energy, where the estimated acquisition value is \$450,000 or more.

(g) Do not use the clauses prescribed in paragraphs (d) and (f) of this section when—

(1) The solicitation is restricted to domestic end products under Subpart 6.3; or

(2) The acquisition is made under the Trade Agreements Act (see Subpart 25.4); or

(3) Another exception to the Buy American Act applies (e.g., nonavailability or public interest).

#### SUBPART 25.2—BUY AMERICAN ACT— CONSTRUCTION MATERIALS

##### 25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10) and Executive Order 10582, December 17, 1954 (as amended). It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

##### 25.201 Definitions.

"Components", as used in this subpart, means those articles, materials, and supplies incorporated directly into construction materials.

"Construction", as used in this subpart, means construction, alteration, or repair of any public building or public work in the United States.

"Construction material", as used in this subpart, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, and supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

"Domestic construction material", as used in this subpart, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued).

Components of foreign origin of the same class or kind for which determinations have been made in accordance with 25.202(a)(3) are treated as domestic.

"Foreign construction material", as used in this subpart, means a construction material other than a domestic construction material.

"United States", (see 25.101).

##### 25.202 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with 25.203;

(2) The agency head determines that use of a particular domestic construction material would be impracticable; or

(3) The head of the contracting activity or designee determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see 25.108).

(b) When it is determined for any of the reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the contract. Findings justifying the exception shall be available for public inspection.

(c) For construction contracts with an acquisition value of \$6,500,000 or more, see 25.402(a)(3) and (4).

##### 25.203 Evaluating offers.

(a) The restrictions of the Buy American Act do not apply when the head of the concerned agency determines that using a particular domestic construction material would unreasonably increase the cost or would be impracticable.

(b) When proposed awards are submitted to the agency head for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials.

##### 25.204 Violations.

If the agency head finds that in the performance of a construction contract there has been a failure to comply with the clause at 52.225-5, Buy American Act—Construction Materials, those findings (including the name of the contractor obligated under the contract) shall be made public. No other contract for construction shall be awarded to that contractor, its subcontractors, or suppliers with which that contractor is associated or affiliated, within a period of 3 years after the findings are made public. (For debarment procedures, see Subpart 9.4.)

##### 25.205 Solicitation provision and contract clause.

(a) Except when use of the clause at 52.225-15 is pre-

scribed, the contracting officer shall insert the clause at 52.225-5, Buy American Act—Construction Materials, in solicitations and contracts for construction.

(b) For construction contracts with an estimated acquisition value of \$6,500,000 (\$8,000,000 for the Power Marketing Administrations) or more, to be awarded by agencies listed in 25.407, insert the clause at 52.225-15, Buy American Act—Construction Materials under European Community and North American Free Trade Agreements, in solicitations and contracts for construction.

### SUBPART 25.3—BALANCE OF PAYMENTS PROGRAM

#### 25.300 Scope of subpart.

This subpart provides policies and procedures applicable to contracting for supplies, services, or construction for use outside the United States and provides for the use of excess or near-excess foreign currency. The Balance of Payments Program restrictions have been waived with respect to the acquisition, in accordance with Subpart 25.4, of certain products under the Trade Agreements Act of 1979 and the North American Free Trade Agreement (NAFTA) Implementation Act.

#### 25.301 Definitions.

"Components" (see 25.101).

"Domestic end product" (see 25.101).

"Domestic offer" (see 25.101).

"Domestic services", as used in this subpart, means services performed in the United States. If services provided under a single contract are performed both inside and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

"End product" (see 25.101).

"Foreign end product" (see 25.101).

"Foreign offer" (see 25.101).

"Foreign services", as used in this subpart, means services other than domestic services.

"United States" (see 25.101).

#### 25.302 Policy.

(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.

(b) Foreign end products or services may be acquired for use outside the United States if any of the following

conditions are met:

(1) The estimated cost of the product or service does not exceed the appropriate small purchase limitation in Part 13.

(2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption.

(3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108).

(4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist.

(5) Subsistence items are required specifically for resale in overseas commissary stores.

(6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

(7) Petroleum supplies and their by-products as listed and defined in 25.108 are required.

(8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304).

(9) The end products or services are mined, produced, or manufactured in Panama and are required by and of the use of United States Forces in Panama.

(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by more than 50 percent. A differential greater than 50 percent may be used when specifically authorized by the agency head or a designee.

#### 25.303 Procedures.

(a) *Solicitation of offers.* The procedures in this section apply to contracts for supplies and services when the exceptions in 25.302(b) do not apply. Solicitations shall state that information regarding articles, materials, supplies, and services excepted from these procedures is available to prospective contractors upon request. When quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when the price for the foreign end products or services meets the evaluation criteria in paragraph (b) of this section.

(b) *Evaluation.* For purposes of evaluation, each foreign offer shall be adjusted by increasing it by 50 percent. If this procedure results in a tie between a foreign offer as evaluated and a domestic offer, the domestic offer shall be

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considered the successful offer. When this procedure results in the acquisition of foreign end products or services, the acquisition of domestic end products or services is thereby considered unreasonable in cost or inconsistent with the public interest.

**25.304 Excess and near-excess foreign currencies.**

(a) The United States holds currencies of certain countries in amounts determined annually by the Secretary of the Treasury to be excess to the normal, or above the immediate (near excess) requirements of the Government. These countries are identified in Bulletins issued by the Office of Management and Budget which will be distributed through agency procedures on an expedited basis. Additional information may also be obtained from the Department of the Treasury, Office of the Assistant Secretary for International Affairs, Office of Development Policy. Acquisitions of foreign end products, services, or construction paid for in excess or near-excess foreign currencies are an exception to the balance of payments restrictions in this subpart (see 25.302(b)(8)).

(b) Excess and near-excess foreign currencies shall be used whenever feasible in payment of contracts over \$1 million performed wholly or partly in any of the listed countries. In some cases, award may be made to an offeror willing to accept payment, in whole or part, in excess or near-excess foreign currency, even though the offer, when compared to offers in United States dollars, is not the lowest received. Price differentials may be funded from excess or near-excess foreign currencies available without charge to agency appropriations, subject to Office of Management and Budget (OMB) Circular No. A-20, May 21, 1966.

(c) Before issuing solicitations for contracts to be performed wholly or partly in the listed countries, the contracting officer shall obtain a determination from the agency head, or a designee no lower than the head of the contracting activity, as to the feasibility of using excess or near-excess foreign currency. Agency officials shall consult with the Budget Review Division, Office of Management and Budget, and verify—

- (1) The availability of excess or near-excess foreign currency;
- (2) The feasibility of using that currency in payment of the contract;
- (3) The price differential, if any, that will be considered acceptable; and
- (4) Procedures for obtaining excess or near-excess foreign currency requirements.

(d) When use of excess or near-excess foreign currency is determined feasible, the contracting officer shall, in the solicitation—

- (1) Require that offers be stated in U.S. dollars;
- (2) Request that offers also be stated, in whole or in part, in excess or near-excess foreign currency; and
- (3) Reserve the right to make the award to the

responsive offeror (i) that is willing to accept payment, in whole or in part, in excess or near-excess foreign currency, and (ii) whose offer is most advantageous to the Government, even though the total price may be higher than offers in U.S. dollars.

**25.305 Solicitation provision and contract clause.**

(a) *Solicitation provision.* The contracting officer shall insert the provision at 52.225-6, Balance of Payments Program Certificate, in solicitations for supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 or NAFTA (see Subpart 25.4).

(b) *Oral quotations.* When quotations are obtained orally, vendors shall be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when the price for the foreign end products or services meets the evaluation criteria in 25.303(b).

(c) *Contract clause.* The contracting officer shall insert the clause at 52.225-7, Balance of Payments Program, in solicitations and contracts for acquiring supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 or NAFTA (see Subpart 25.4).

**SUBPART 25.4—TRADE AGREEMENTS****25.400 Scope of subpart.**

This subpart provides policies and procedures for acquisitions subject to the Agreement on Government Procurement and the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582) and other trade agreements, including—

(a) Acquisitions from countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.);

(b) Acquisitions involving offers of Israeli end products under the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note);

(c) Acquisitions involving offers of Canadian or Mexican end products under the North American Free Trade Agreement (NAFTA), as approved by Congress in the NAFTA Implementation Act (Pub. L. 103-182, 107 Stat. 2057);

(d) The Agreement on Civil Aircraft (19 U.S.C. 2513); and

(e) The Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement.

**25.401 Definitions.**

"Canadian end product", as used in this subpart, means

an article that (a) is wholly the growth, product, or manufacture of Canada, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

“Caribbean Basin country”, as used in this subpart, means a country designated by the President as a beneficiary under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.) and listed below:

Antigua and Barbuda	Guatemala
Aruba	Guyana
Bahamas	Honduras
Barbados	Jamaica
Belize	Montserrat
British Virgin Islands	Netherlands Antilles
Costa Rica	St. Christopher-Nevis
Dominica	St. Lucia
Dominican Republic	St. Vincent and the Grenadines
El Salvador	Tobago
Grenada	
Trinidad	

“Caribbean Basin country end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Caribbean Basin country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term *includes* services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term *excludes* products that are excluded from duty free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

(1) Textiles and apparel articles that are subject to textile agreements;

(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(3) Tuna, prepared or preserved in any manner in airtight containers;

(4) Petroleum, or any product derived from petroleum; and

(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

“Designated country”, as used in this subpart, means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed below:

Austria	Italy
Bangladesh	Japan
Belgium	Lesotho
Benin	Liechtenstein
Bhutan	Luxembourg
Botswana	Malawi
Burkina Faso	Maldives
Burundi	Mali
Canada	Nepal
Cape Verde	Netherlands
Central African Republic	Niger
Chad	Norway
Comoros	Portugal
Denmark	Rwanda
Federal Republic of Germany	Singapore
Finland	Somalia
France	Spain
Gambia	Sudan
Greece	Sweden
Guinea	Switzerland
Haiti	Uganda
Hong Kong	United Kingdom
Ireland	United Republic of Tanzania
Israel	Western Samoa
Yemen	

“Designated country end product”, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the designated country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

“Eligible product”, as used in this subpart, means a designated, North American Free Trade Agreement (NAFTA), or Caribbean Basin country end product.

“European Community (EC) construction material”, as used in this subpart, means an article, material, or supply

that (a) is wholly the growth, product, or manufacture of an EC country, or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in an EC country into a new and different construction material distinct from the materials from which it was transformed.

"EC country", as used in this subpart, means Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

"EC end product", as used in this subpart, means an article that (a) is wholly the growth product or manufacture of an EC country or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in an EC country into a new and different article of commerce with a name, character or use distinct from that from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself. It does not include service contracts as such.

"Mexican end product", as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Mexico, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"North American Free Trade Agreement (NAFTA) country", as used in this subpart, means Canada or Mexico.

"NAFTA country construction material", means a construction material that (a) is wholly the growth, product, or manufacture of a NAFTA country or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

"NAFTA country end product", as used in this subpart, means a Canadian end product or a Mexican end product.

#### 25.402 Policy.

(a)(1) Executive Order 12260 requires the U.S. Trade Representative to set the dollar threshold for application of the Trade Agreements Act. The current threshold is \$182,000. The threshold will be published in the Federal Register and will be distributed through agency procedures on an expedited basis. When the value of the proposed

acquisition of an eligible product is estimated to be at or over the dollar threshold, agencies shall evaluate offers for an eligible product without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (see Subpart 25.3). When the value of the proposed acquisition is estimated to be below the Trade Agreements Act threshold, the restrictions of the Buy American Act or the Balance of Payments Program shall be applied to foreign offers, except as noted in subparagraphs (a)(2) and (a)(3) of this section (see 25.105).

(2) As required by Article 15 of the U.S.-Israel Free Trade Area Agreement, agencies other than the Department of Defense shall evaluate offers of Israeli end products at or above \$50,000 in amount without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (see Subpart 25.3).

(3) As required by the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057) agencies shall evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (see Subpart 25.3):

(i) NAFTA country construction materials under construction contracts with an estimated acquisition value of \$6,500,000 or more for the agencies in 25.407, except for the Power Marketing Administration segments of the Department of Energy where the estimated acquisition value is \$8,000,000 or more.

(ii) Canadian end products under supply contracts with an estimated value above \$25,000 and Mexican end products under supply contracts with an estimated value of \$50,000 or more for the agencies in 25.407, except for the Power Marketing Administrations' segment of the Department of Energy where the estimated acquisition value is \$250,000 or more.

(4) As required by the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement (European Community Agreement) as implemented by EO 12849, application of the Buy American Act is exempted for the following:

(i) EC construction materials under construction contracts with an estimated acquisition value of \$6,500,000 or more purchased by the agencies listed in 25.407.

(ii) EC country end products under supply contracts with an estimated acquisition value of \$182,000 or more purchased by the agencies listed at 25.407, except for the Power Marketing Administrations' segment of the Department of Energy where the estimated acquisition value is \$450,000 or more.

(5) To determine whether the Trade Agreements Act or NAFTA applies to the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase), the contracting officer shall calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of this acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by 48.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(6) If a contemplated acquisition includes an option clause (see Subpart 17.2), when calculating the threshold for application of Trade Agreements Act or NAFTA provisions, include the value of all options.

(b) The U.S. Trade Representative has determined that in order to promote further the economic recovery of the Caribbean Basin countries (as defined in 25.401), products originating in those countries which are eligible for duty free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products for the purposes of this subpart (see 51 FR 6964-6965, February 27, 1986). This determination is effective until September 30, 1995, unless otherwise extended by the U.S. Trade Representative by means of a notice in the Federal Register.

(c) Except when waived under section 302(b)(2) of the Trade Agreements Act, there shall be no acquisition of foreign end products subject to the Act unless the foreign end products are designated country end products or Caribbean Basin country end products. This prohibition does not apply to subparagraphs (a)(2), (a)(3), or (a)(4) of this section.

(d) No requirement for the acquisition of eligible products shall be divided with the intent of reducing the estimated value of the acquisition below the dollar threshold addressed in paragraph (a) of this section.

(e) Acquisitions of eligible products are subject to the requirements of Part 6. The use of the authorities cited in 6.302-3(a)(2)(i) or 6.302-7 requires compliance with 6.303-1(d).

(f) Subject to the provisions of U.S. law and regulation, a supplier established in a designated, North American Free Trade Agreement, or a Caribbean Basin country shall not be accorded less favorable treatment than is accorded to another supplier established in that country on the basis of—

(1) Foreign ownership or affiliation; or

(2) Where the goods being supplied were produced,

provided that the country of production is a designated, North American Free Trade Agreement, or a Caribbean Basin country.

#### 25.403 Exceptions.

This subpart does not apply to—

(a) An acquisition of an eligible product where the estimated value of the acquisition falls below the dollar thresholds discussed in 25.402(a);

(b) Products of countries (1) not identified in 25.401 as designated, Caribbean Basin, or North American Free Trade Agreement countries, or (2) barred by 25.402(c);

(c) Purchases under small or small disadvantaged business preference programs;

(d)(1) Purchases of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes, by the Department of Defense, as provided in departmental regulations;

(2) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

(e) Construction contracts (but see 25.402(a)(3) and (4));

(f) Service contracts (except those services incidental to the purchase of eligible products; *provided*, that the value of the services is not greater than the value of the product);

(g) Research and development contracts;

(h) Purchases by the U.S. Army Corps of Engineers, except as provided at 25.402(a)(3) and (4);

(i) Purchases of items for resale;

(j) Purchases under Subpart 8.6, Acquisition from Federal Prison Industries, Inc., and Subpart 8.7, Acquisition from the Blind and Other Severely Handicapped;

(k) Reserved;

(l)(1) For purchases subject to North American Free Trade Agreement or the European Community Agreement, agencies not listed at 25.407;

(2) For other purchases under this subpart, agencies not listed at 25.406; or

(m) Purchases of products that are excluded from duty free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

(1) Textiles and apparel articles that are subject to textile agreements;

(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for this purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(3) Tuna, prepared or preserved in any manner in airtight containers;

(4) Petroleum, or any product derived from petroleum; and

(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to,

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mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column two rates of duty apply.

**25.404 Labor surplus area set-asides.**

(a) Except as provided in paragraph (b) of this section, when responsive offers are received for an eligible product, labor surplus area preference shall be accorded only to small business concerns.

(b) When responsive offers are received for an Israeli end product in an amount of at least \$50,000 but less than the dollar threshold described in 25.402(a)(1), preference shall be accorded to all labor surplus area concerns.

**25.405 Procedures.**

When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used:

(a) Contracting officers shall comply with the requirements of 5.203, Publicizing and response time.

(b) Agencies shall not impose technical requirements solely to preclude the acquisition of eligible products.

(c) Offers received in response to solicitations anticipating competitive negotiations shall be opened in the presence of an impartial witness, whose name shall be recorded in the contract file.

(d) Solicitations shall specify that offers involving eligible products from designated, NAFTA, or Caribbean Basin countries shall be submitted in the English language and in U.S. dollars.

(e) Within 7 working days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries written notice in accordance with 14.408-1(a)(2) and 15.1001(c)(2).

**25.406 Agencies covered by the Agreement on Government Procurement.****ACTION**

Administrative Conference of the United States

American Battle Monuments Commission

Board for International Broadcasting

Commission on Civil Rights

Commodity Futures Trading Commission

Community Services Administration

Consumer Product Safety Commission

Department of Agriculture (the Agreement on Government Procurement does not apply to acquiring agricultural products in furtherance of agricultural support programs or human feeding programs)

Department of Commerce

Department of Defense (excludes Army Corps of Engineers)

Department of Education

Department of Health and Human Services

Department of Housing and Urban Development

Department of the Interior (excludes the Bureau of Reclamation)

Department of Justice

Department of Labor

Department of State

Department of the Treasury

Department of Veterans Affairs

Environmental Protection Agency

Equal Employment Opportunity Commission

Executive Office of the President

Export-Import Bank of the United States

Farm Credit Administration

Federal Communications Commission

Federal Deposit Insurance Corporation

Federal Home Loan Bank Board

Federal Maritime Commission

Federal Mediation and Conciliation Service

Federal Trade Commission

General Services Administration (except Federal Supply Groups 51 and 52 and Federal Supply Class 7340)

Interstate Commerce Commission

Maritime Administration of the Department of Transportation

Merit Systems Protection Board

National Aeronautics and Space Administration

National Archives and Records Administration

National Credit Union Administration

National Labor Relations Board

National Mediation Board

National Science Foundation

National Transportation Safety Board

Nuclear Regulatory Commission

Office of Personnel Management

Overseas Private Investment Corporation

Peace Corps

Panama Canal Commission

Railroad Retirement Board

Securities and Exchange Commission

Selective Service System

Smithsonian Institution

United States Arms Control and Disarmament Agency

United States Information Agency

United States International Development Cooperation

Agency

United States International Trade Commission

**25.407 Agencies covered by the European Community and North American Free Trade Agreements.**

(a) The agencies listed in 25.406.

(b) Bureau of Reclamation, Department of the Interior.

(c) Department of Energy (not including national security procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act, or oil purchases related to



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the Strategic Petroleum Reserve).

(d) Department of Transportation (the national security considerations currently applicable to the Department of Defense under the Agreement on Government Procurement are applicable to the Coast Guard).

(e) U.S. Army Corps of Engineers, Department of Defense.

(f) Federal Housing Finance Board.

(g) Office of Thrift Supervision.

**25.408 Solicitation provision and contract clause.**

(a) The contracting officer shall insert—

(1) The provision at 52.225-8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225-9;

(2) The clause at 52.225-9, Buy American Act—Trade Agreements—Balance of Payments Program, where the contracting officer has determined that the acquisition is subject to the Trade Agreements Act;

(3) The provision at 52.225-20, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225-21; and

(4) The clause at 52.225-21, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program, where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA.

(b) The contracting officer shall rely on the offeror's certification as submitted.

(c) The clause prescriptions at paragraph (a) of this section shall apply where any item under a multiple item solicitation is determined to be subject to the Trade Agreements Act or North American Free Trade Agreement Implementation Act. If the Acts do not apply to all of the items being solicited, the contracting officer shall indicate, in the schedule, those items that are exempt.

(d) The contracting officer shall insert the provisions at 52.214-34, Submission of Offers in the English Language, and 52.214-35, Submission of Offers in U.S. Currency, in all solicitations subject to the Trade Agreements Act or NAFTA.

**SUBPART 25.5—PAYMENT IN LOCAL FOREIGN CURRENCY****25.501 Policy.**

(a) Contracts entered into and performed outside the United States with local foreign firms will be priced and paid in local currency, unless an international agreement provides for payment in U.S. dollars or the contracting officer determines the use of local currency to be

inequitable or inappropriate.

(b) When the local currency increases in value in relation to the dollar, a violation of the Anti-Deficiency Act (31 U.S.C. 665) could occur. To avoid this possibility, agencies should ensure the availability of adequate dollar appropriations to purchase local currency needed to make payments against the contract.

**SUBPART 25.6—CUSTOMS AND DUTIES****25.600 Scope of subpart.**

This subpart provides policies and procedures for exempting from import duties certain supplies purchased under Government contracts. Regulations governing importations and duties are contained in the "Customs Regulations" issued by the U.S. Customs Service, Department of the Treasury (Chapter 1, Title 19 of the Code of Federal Regulations).

**25.601 Definition.**

"Customs territory of the United States," as used in this subpart, means the States, the District of Columbia, and Puerto Rico.

**25.602 Policy.**

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. Agencies shall use these exemptions whenever the anticipated savings to appropriated funds will outweigh the administrative costs associated with processing required documentation.

**25.603 Procedures.**

(a) *General.* Except as provided elsewhere in the Customs Regulations (see 19 CFR 10.100), all shipments of imported supplies purchased under Government contracts are subject to the usual Customs entry and examination requirements. Unless the agency obtains an exemption (see 25.604), those shipments are also subject to duty.

(b) *Formal entry and release.* (1) Upon receipt of a notice from a Government contractor or customs office of the arrival, or pending arrival, of a shipment of supplies entitled to duty-free entry, the contracting officer normally shall execute—

(i) Customs Form 7501, Consumption Entry, which shall serve as both the entry and the entry summary (see 19 CFR Parts 141-142) (two copies to be forwarded to the District Director of Customs at port of entry);

(ii) Customs Form 7501-A, Consumption Entry Permit (one copy to be forwarded to the District Director of Customs at port of entry); and

(iii) Either a duty-free entry certificate when required in accordance with 25.604 (two copies to be



forwarded to the District Director of Customs at port of entry) or Customs Form 7506, Warehouse Withdrawal Conditionally Free of Duty, and Permit (two copies to be forwarded to the District Director of Customs at warehouse location).

(2) Customs forms are available from any District Director of Customs Office or United States Customs port. Data for completing customs forms shall be obtained from the contractor.

(c) *Immediate entry and release.* Imported supplies purchased under Government contracts are regarded as shipments, the immediate delivery of which is necessary under the provisions of 19 U.S.C. 1448(b). Request for their release from Customs custody before formal entry and release shall normally be made by the contracting officer by filing Customs Form 3461, Immediate Delivery Application, with the District Director of Customs at port of entry. Forms for formal entry and release must be filed within a reasonable time thereafter. Applications for immediate delivery may be limited to particular shipments or may cover all shipments under a Government contract. They may be approved for specific or indefinite periods of time (see 19 CFR 10.101 and 19 CFR Part 142, Subpart A, for requirements).

#### 25.604 Exempted supplies.

(a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) lists supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the purpose stated in the Tariff Schedule (see 19 CFR 10.102-104, 10.110, 10.114-119, 10.121, and 15 CFR 301 for requirements and formats).

(b) Supplies (as opposed to equipment) for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal revenue tax as provided in 19 U.S.C. 1309(a). The contracting activity shall cite this authority on the appropriate customs form when making such purchases (see 19 CFR 10.59(a)).

#### 25.605 Contract clause.

(a) The contracting officer shall insert the clause at 52.225-10, Duty-Free Entry, in solicitations and contracts over \$100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States.

(b) The clause may be used in solicitations and contracts of \$100,000 or less, if such action is consistent with the policy in 25.602.

(c) If the contracting officer knows before award that the contract includes specific supplies that will be accorded

duty-free entry, a list of these supplies shall be inserted in the contract Schedule. The list shall include item numbers from Schedule 8, Tariff Schedules of the United States, and a description of the supplies.

### SUBPART 25.7—RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

#### 25.701 Reserved.

#### 25.702 Restrictions.

(a) The Government does not acquire supplies or services from foreign governments or their organizations when these supplies or services cannot be imported lawfully into the United States. Therefore, except as provided in 25.703(a), agencies and their contractors and subcontractors shall not acquire—

(1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba (31 CFR 500);

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba (31 CFR 515); or

(3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles (22 U.S.C. 2778).

(b) Agencies and their contractors and subcontractors shall not acquire supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq (E.O. 12722 and 12724) (31 CFR 575). The effective date for Iraqi restrictions is August 2, 1990. Questions concerning these restrictions should be referred to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220 (Telephone No. (202) 622-2520).

#### 25.703 Exceptions.

In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is the contracting officer for small purchases, unless otherwise provided by the agency in the case, or the agency head for other than small purchases. A copy of the written approval shall be furnished to the contractor.

#### 25.704 Contract clause.

The contracting officer shall insert the clause at 52.225-11, Restrictions on Certain Foreign Purchases, in solicitations and contracts.

## SUBPART 25.8—INTERNATIONAL AGREEMENTS AND COORDINATION

### 25.801 International agreements.

Treaties and agreements between the United States and foreign governments may affect contracting within foreign countries. Contracting officers should give particular attention to the provisions in those agreements that pertain to purchase procedures, contract forms and clauses, taxes, patents, technical information, facilities, and other matters related to contracting.

### 25.802 Procedures.

(a) When placing contracts with contractors outside the United States, for performance outside the United States, contracting officers shall—

(1) Determine the existence and applicability of any international agreements to contracts being planned or processed, and ensure compliance with these agreements; and

(2) Conduct the necessary advance acquisition planning and coordination between the appropriate United States executive agencies and foreign interests as required by these agreements.

(b) Many international agreements are compiled in the "United States Treaties and Other International Agreements" series published by the Department of State. Copies of this publication are normally available in overseas legal offices and United States diplomatic missions.

## SUBPART 25.9—ADDITIONAL FOREIGN ACQUISITION CLAUSES

### 25.901 Omission of the examination of records clause.

(a) *Definition.* "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(b) *Policy.* As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106-1(b)(3), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the clause at 52.215-1, Examination of Records by Comptroller General. Omission of the clause should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.

(c) *Conditions for omission.* (1)(i) The contracting officer may omit the clause at 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors—

(A) If the agency head determines, with the concurrence of the Comptroller General or a designee, the omission of the clause will serve the public interest; or

(B) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(ii) When a determination under subdivision (c)(1)(i)(B) of this section is the basis for omission of the clause at 52.215-1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination.

(d) *Determination and findings.* The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the clause;

(3) State the reasons for the contractor's refusal to include the clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to omit the clause.

### 25.902 Inconsistency between English version and translation of contract.

The contracting officer shall insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts whenever translation into another language is anticipated.

## SUBPART 25.10—IMPLEMENTATION OF SANCTIONS AGAINST COUNTRIES THAT DISCRIMINATE AGAINST UNITED STATES PRODUCTS OR SERVICES IN GOVERNMENT PROCUREMENT

### 25.1000 Scope of subpart.

This subpart implements section 305(d)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(d)(1)), which requires the President to identify a country which discriminates against U.S. products or services in Government procurement and to impose sanctions on that country's products and services. This subpart does not apply to the Department of Defense.

### 25.1001 Definitions.

As used in this subpart—

"Sanctioned European Community (EC) construction" means construction to be performed in a sanctioned member state of the EC and the contract is awarded by a contracting activity located in the United States or its territories.

“Sanctioned EC end product” means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the EC or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character or use distinct from that from which it was so transformed in a sanctioned member state of the EC. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of these incidental services does not exceed that of the product itself. It does not include service contracts as such.

“Sanctioned EC services” means services to be performed in a sanctioned member state of the EC when the contract is awarded by a contracting activity located in the United States or its territories.

“Sanctioned member state of the EC” means Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom.

#### 25.1002 Trade sanctions.

(a) Subject to the exceptions in paragraph (b) of this section, executive agencies shall not award contracts for—

(1) Sanctioned EC end products with an estimated acquisition value of less than—

- (i) \$450,000 for Power Marketing Administrations of the Department of Energy; or
- (ii) \$176,000 for other executive agencies.

(2) Sanctioned EC construction with an estimated acquisition value of less than \$6,500,000.

(3) Sanctioned EC services as follows:

(i) All service contracts awarded by the Power Marketing Administrations of the Department of Energy.

(ii) Service contracts with an estimated acquisition value less than \$176,000 for all other executive agencies.

(iii) Regardless of dollar value, contracts for—

(A) All transportation services, including Launching Services (all V codes, J019, J998, J999, K019);

(B) Dredging (Y216, Z216);

(C) Management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centers (all M codes);

(D) Development, production or co-production of program material for broadcasting, such as motion pictures (T006, T016);

(E) Research and development (all A codes);

(F) Airport concessions (S203);

(G) Legal services (R418);

(H) Hotel and restaurant services (S203);

(I) Placement and supply of personnel services (V241, V251);

(J) Investigation and security services (S206, S211, R423);

(K) Education and training services (all U codes, R419);

(L) Health and social services (all O codes, all G codes);

(M) Recreational, cultural, and sporting services (G003); and

(N) Telecommunications services (encompassing only voice telephony, telex, radio telephony, paging, and satellite services) (S1, D304, D305, D316, D317, D399).

(b) The sanctions in paragraph (a) of this section do not apply to the following:

(1) Purchases awarded by simplified procedures in accordance with Part 13.

(2) Total small business set asides under 19.502-2.

(3) Contracts in support of the U.S. national security interests.

(4) Contracts for goods or services awarded outside the United States and its territories where the goods or services are to be used outside the United States.

(5) Contracts for essential spare, repair, or replacement parts not otherwise available from non-sanctioned countries.

(c) *Authority to exempt certain procurements.* (1) The head of an agency, without power of redelegation, may authorize the award of a contract or class of contracts for sanctioned EC end products, services, and construction, the purchase of which is otherwise prohibited under paragraph (a) of this section if the agency head determines that such action is necessary—

(i) In the public interest;

(ii) To avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(iii) Because there would be or are an insufficient number of potential or actual bidders to assure the procurement of services, articles, materials or supplies of requisite quality at competitive prices.

(2) When a determination is made according to this paragraph (c), the head of the agency shall notify the Chairman of the Committee on Banking, Finance and Urban Affairs and the Chairman of the Committee on Governmental Affairs of the United States Senate; the Chairman of the Committee on Ways and Means and the Chairman of the Committee on Government Operations of the United States House of Representatives—

(i) Not less than 30 days prior to the date of award of a contract or the date of authorization of the award of a class of contracts; or

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(ii) Not more than 90 days after the award of a contract or authorization where the agency's need for the service, article, material or supply is of such urgency that the United States would be seriously injured by a delay.

(3) A copy of the notification required in paragraph (c)(2) of this section shall be sent to the United States Trade Representative.

**25.1003 Solicitation provisions and contract clauses.**

Except as provided in 25.1002(b) and (c)—

(a) Insert the clause at 52.225-18, European

Community Sanctions for End Products, in solicitations and contracts for supplies with an estimated acquisition value less than: (1) \$450,000 for Power Marketing Administrations of the Department of Energy; and (2) \$182,000 for all other executive agencies.

(b) Insert the clause at 52.225-19, European Community Sanction for Services, in solicitations and contracts (1) for all services purchased by the Power Marketing Administrations of the Department of Energy; (2) for services with an estimated value less than \$182,000 purchased by all other executive agencies; and (3) all services listed in FAR 25.1002(a)(3)(iii).

- 52.215-30 Facilities Capital Cost of Money.
- 52.215-31 Waiver of Facilities Capital Cost of Money.
- 52.215-32 Certification of Commercial Pricing for Parts or Components.
- 52.215-33 Order of Precedence.
- 52.215-34 Evaluation of Offers for Multiple Awards.
- 52.215-35 Annual Representations and Certifications—Negotiation.
- 52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).
- 52.215-37 Commercial Pricing Certificate—Notice.
- 52.215-38 Preparation of Offers—Construction.
- 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
- 52.216-1 Type of Contract.
- 52.216-2 Economic Price Adjustment—Standard Supplies.
- 52.216-3 Economic Price Adjustment—Semistandard Supplies.
- 52.216-4 Economic Price Adjustment—Labor and Material.
- 52.216-5 Price Redetermination—Prospective.
- 52.216-6 Price Redetermination—Retroactive.
- 52.216-7 Allowable Cost and Payment.
- 52.216-8 Fixed Fee.
- 52.216-9 Fixed Fee—Construction.
- 52.216-10 Incentive Fee.
- 52.216-11 Cost Contract—No Fee.
- 52.216-12 Cost-Sharing Contract—No Fee.
- 52.216-13 Allowable Cost and Payment—Facilities.
- 52.216-14 Allowable Cost and Payment—Facilities Use.
- 52.216-15 Predetermined Indirect Cost Rates.
- 52.216-16 Incentive Price Revision—Firm Target.
- 52.216-17 Incentive Price Revision—Successive Targets.
- 52.216-18 Ordering.
- 52.216-19 Delivery-Order Limitations.
- 52.216-20 Definite Quantity.
- 52.216-21 Requirements.
- 52.216-22 Indefinite Quantity.
- 52.216-23 Execution and Commencement of Work.
- 52.216-24 Limitation of Government Liability.
- 52.216-25 Contract Definitization.
- 52.216-26 Payments of Allowable Costs Before Definitization.
- 52.217-1 Limitation of Price and Contractor Obligations.
- 52.217-2 Cancellation of Items.
- 52.217-3 Evaluation Exclusive of Options.
- 52.217-4 Evaluation of Options Exercised at Time of Contract Award.
- 52.217-5 Evaluation of Options.
- 52.217-6 Option for Increased Quantity.
- 52.217-7 Option for Increased Quantity—Separately Priced Line Item.
- 52.217-8 Option to Extend Services.
- 52.217-9 Option to Extend the Term of the Contract.
- 52.218 [Reserved]
- 52.219-1 Small Business Concern Representation.
- 52.219-2 Small Disadvantaged Business Concern Representation.
- 52.219-3 Women-Owned Small Business Representation.
- 52.219-4 Notice of Small Business-Small Purchase Set-Aside.
- 52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.
- 52.219-6 Notice of Total Small Business Set-Aside.
- 52.219-7 Notice of Partial Small Business Set-Aside.
- 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
- 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.
- 52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.
- 52.219-11 Special 8(a) Contract Conditions.
- 52.219-12 Special 8(a) Subcontract Conditions.
- 52.219-13 Utilization of Women-Owned Small Businesses.
- 52.219-14 Limitations on Subcontracting.
- 52.219-15 Notice of Participation by Organizations for the Handicapped.
- 52.219-16 Liquidated Damages—Small Business Subcontracting Plan.
- 52.219-17 Section 8(a) Award.
- 52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
- 52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
- 52.219-20 Notice of Emerging Small Business Set-Aside.
- 52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.
- 52.219-22 SIC Code and Small Business Size Standard.
- 52.220-1 Preference for Labor Surplus Area Concerns.
- 52.220-2 Notice of Total Labor Surplus Area Set-Aside.
- 52.220-3 Utilization of Labor Surplus Area Concerns.
- 52.220-4 Labor Surplus Area Subcontracting Program.
- 52.221 [Reserved]
- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-2 Payment for Overtime Premiums.
- 52.222-3 Convict Labor.
- 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
- 52.222-5 [Reserved]
- 52.222-6 Davis-Bacon Act.
- 52.222-7 Withholding of Funds.
- 52.222-8 Payrolls and Basic Records.
- 52.222-9 Apprentices and Trainees.
- 52.222-10 Compliance with Copeland Act Requirements.
- 52.222-11 Subcontracts (Labor Standards).

- 52.222-12 Contract Termination—Debarment.
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
- 52.222-14 Disputes Concerning Labor Standards.
- 52.222-15 Certification of Eligibility.
- 52.222-16 Approval of Wage Rates.
- 52.222-17 Labor Standards for Construction Work—Facilities Contracts.
- 52.222-18 [Reserved]
- 52.222-19 Walsh-Healey Public Contracts Act Representation.
- 52.222-20 Walsh-Healey Public Contracts Act.
- 52.222-21 Certification of Nonsegregated Facilities.
- 52.222-22 Previous Contracts and Compliance Reports.
- 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.
- 52.222-24 Preaward On-Site Equal Opportunity Compliance Review.
- 52.222-25 Affirmative Action Compliance.
- 52.222-26 Equal Opportunity.
- 52.222-27 Affirmative Action Compliance Requirements for Construction.
- 52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.
- 52.222-29 Notification of Visa Denial.
- 52.222-30—
- 52.222-34 [Reserved]
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
- 52.222-36 Affirmative Action for Handicapped Workers.
- 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
- 52.222-38—
- 52.222-39 [Reserved]
- 52.222-40 Service Contract Act of 1965, as Amended—Contracts of \$2,500 or Less.
- 52.222-41 Service Contract Act of 1965, as Amended.
- 52.222-42 Statement of Equivalent Rates for Federal Hires.
- 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
- 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
- 52.222-45 [Reserved]
- 52.222-46 Evaluation of Compensation for Professional Employees.
- 52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).
- 52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—
- Contractor Certification.
- 52.222-49 Service Contract Act—Place of Performance Unknown.
- 52.223-1 Clean Air and Water Certification.
- 52.223-2 Clean Air and Water.
- 52.223-3 Hazardous Material Identification and Material Safety Data.
- 52.223-4 Recovered Material Certification.
- 52.223-5 Certification Regarding A Drug-Free Workplace.
- 52.223-6 Drug-Free Workplace.
- 52.223-7 Notice of Radioactive Materials.
- 52.224-1 Privacy Act Notification.
- 52.224-2 Privacy Act.
- 52.225-1 Buy American Certificate.
- 52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.
- 52.225-3 Buy American Act—Supplies.
- 52.225-4 [Reserved]
- 52.225-5 Buy American Act—Construction Materials.
- 52.225-6 Balance of Payments Program Certificate.
- 52.225-7 Balance of Payments Program.
- 52.225-8 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.
- 52.225-9 Buy American Act—Trade Agreements—Balance of Payments Program.
- 52.225-10 Duty-Free Entry.
- 52.225-11 Restrictions on Certain Foreign Purchases.
- 52.225-12—52.225-13 [Reserved]
- 52.225-14 Inconsistency Between English Version and Translation of Contract.
- 52.225-15 Buy American Act — Construction Materials under European Community and North American Free Trade Agreements.
- 52.225-16 Buy American Act — Supplies under European Community Agreement Certificate.
- 52.225-17 Buy American Act — Supplies under European Community Agreement.
- 52.225-18 European Community Sanction for End Products.
- 52.225-19 European Community Sanction for Services.
- 52.225-20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.
- 52.225-21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.
- 52.226 [Reserved]
- 52.227-1 Authorization and Consent.
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
- 52.227-3 Patent Indemnity.
- 52.227-4 Patent Indemnity—Construction Contracts.
- 52.227-5 Waiver of Indemnity.
- 52.227-6 Royalty Information.

aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act of 1979.

(b) The U.S. Trade Representative has waived applying of the Buy American Act to the acquisition of civil aircraft and related articles (as defined in paragraph (a) of this clause) of countries or instrumentalities that are parties to the Agreement on Trade in Civil Aircraft. As of January 1, 1981, those countries and instrumentalities include Austria, Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom), Japan, Norway, Romania, Sweden, and Switzerland.

(c) For the purpose of this waiver, an article is a product of a country or instrumentality only if—

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the articles from which it was so transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)

(R 1-6.601-1)

#### 52.225-3 Buy American Act—Supplies.

As prescribed in 25.109(d), insert the following clause:

##### BUY AMERICAN ACT—SUPPLIES (JAN 1994)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

“Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see FAR 25.105).

(End of clause)

#### 52.225-4 Reserved.

#### 52.225-5 Buy American Act—Construction Materials.

As prescribed in 25.205, insert the following clause in solicitations and contracts for construction inside the United States:

##### BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAY 1992)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

“Components”, as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

“Construction material”, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

“Domestic construction material”, as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

(b) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract. (The foregoing requirements are

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## FEDERAL ACQUISITION REGULATION (FAR)

administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.2 of the FAR.)

(End of clause)

**52.225-6 Balance of Payments Program Certificate.**

As prescribed in 25.305(a), insert the following provision:

**BALANCE OF PAYMENTS PROGRAM  
CERTIFICATE (APR 1985)**

(a) The offeror hereby certifies that each end product or service, except the end products or services listed below, is a domestic end product or service (as defined in the clause entitled "Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

**Excluded End Products or Services**

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

*(List as necessary)*

(b) For evaluation purposes only, each offer of an end product other than a domestic end product shall be increased by 50 percent. Any domestic end product offer that exceeds such evaluated other end product shall be considered unreasonable in cost or inconsistent with the public interest.

(End of provision)

**52.225-7 Balance of Payments Program.**

As prescribed in 25.305(c), insert the following clause in solicitations and contracts for acquiring supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 (see Subpart 25.4):

**BALANCE OF PAYMENTS PROGRAM  
(APR 1984)**

(a) This clause implements the Balance of Payments Program by providing a preference for domestic end products or services over foreign end products or services.

"Components", as used in this clause, means those articles, materials, and supplies directly incorporated into the end products.

"Domestic end product", as used in this clause, means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or

manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in the United States in sufficient reasonably available commercial quantities of a satisfactory quality shall be treated as domestic. Components of unknown origin shall be considered foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"Domestic services", as used in this clause, means services performed in the United States. If services provided under a single contract are performed both in and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

"End product", as used in this clause, means an article, material, or supply acquired for public use under this contract.

"Foreign end product", as used in this clause, means a product other than a domestic end product.

(b) The contractor agrees that there will be delivered under this contract only domestic end products or services unless, in its offer, it specified delivery of foreign end products or services in the provision entitled "Balance of Payments Program Certificate." An offer based on supplying a foreign end product or service, if accepted, will permit the contractor to supply a product or service without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with paragraph 25.303(b) of the Federal Acquisition Regulation.

(End of clause)

(R 7-104.3)

**52.225-8 Buy American Act—Trade Agreements—  
Balance of Payments Program Certificate.**

As prescribed in 25.408(a)(1), insert the following provision:

**BUY AMERICAN ACT—TRADE AGREEMENTS—  
BALANCE OF PAYMENTS PROGRAM  
CERTIFICATE (JAN 1994)**

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or



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manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

## (b) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN

(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program:"

(Insert line item numbers)

(2) The offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program:"

(Insert line item numbers)

(d) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation.

(End of provision)

### 52.225-9 Buy American Act—Trade Agreements—Balance of Payments Program.

As prescribed in 25.408(a)(2), insert the following clause:

#### BUY AMERICAN ACT—TRADE AGREEMENTS— BALANCE OF PAYMENTS PROGRAM (JAN 1994)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat.

2057), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated, NAFTA, or Caribbean Basin country end products.

"Caribbean Basin country end product", as used in this clause, means an article that: (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR) or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term *excludes* products that are excluded from duty free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

"Components", as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Designated country end product", as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined at FAR 25.401, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"Domestic end product", as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, pro-

duced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

"End products", as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product", as used in this clause, means an end product other than a domestic end product.

"NAFTA country", as used in this clause, means Canada or Mexico.

"NAFTA country end product", as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—Trade Agreements—Balance of Payments Program Certificate." An offer certifying that a designated, NAFTA, or Caribbean Basin country end product will be supplied requires the Contractor to supply a designated, NAFTA, or Caribbean Basin country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product for line items subject to the Trade Agreements Act unless the foreign end product is a designated, NAFTA, or Caribbean end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(c) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the FAR.

(End of clause)

#### 52.225-10 Duty-Free Entry.

As prescribed in 25.605(a), insert the following clause in solicitations and contracts over \$100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States. As prescribed in 25.605(b), the clause may be used in contracts of \$100,000 or less if such action is consistent with the policy in 25.602. When used in contracts of \$100,000 or less, paragraphs (b)(1) and (i)(2) shall be modified to reduce the dollar figure.

#### DUTY-FREE ENTRY (APR 1984)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for any duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(b) Except for supplies listed in the Schedule to be accorded duty-free entry, and except as provided under any other clause of this contract or in paragraph (c) of this clause, the following procedures apply:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation into end items to be delivered under this contract. The notice shall be furnished to the Contracting Officer at least 20 days before the importation and shall identify (i) the foreign supplies, (ii) the estimated amount of duty, and (iii) the country of origin.

(2) If the Contracting Officer determines that these supplies should be entered duty-free, the Contracting Officer shall notify the Contractor within 10 days.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(c) Paragraph (b) of this clause shall not apply to purchases of foreign supplies if (1) they are identical in nature with items purchased by the Contractor or any subcontractor in connection with its commercial business and (2) segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor warrants that all supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated into the end items to be delivered under this contract, and that duty shall be paid to the extent that these supplies, or any portion of them, are diverted to non-Governmental use, other than as scrap or salvage or as a result of a competitive sale authorized by the Contracting Officer.

(e) The Government agrees to execute any required duty-free entry certificates for items specified in this con-

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tract or approved by the Contracting Officer and to assist the Contractor in obtaining duty-free entry of the supplies.

(f) All shipping documents covering the supplies to be entered duty-free shall consign the shipments to the contracting agency in care of the Contractor and shall include the delivery address of the Contractor (or contracting agency, if appropriate). The documents shall bear the following information:

(1) Government prime contract number.

(2) Identification of carrier.

(3) The notation "UNITED STATES GOVERNMENT, \_\_\_\_ [agency] \_\_\_\_, Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_ [from Tariff Schedules] \_\_\_\_, Tariff Schedules of the United States (19 U.S.C. 1202). Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates."

(4) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(5) Estimated value in United States dollars.

(g) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (f) of this clause, to mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency, and to accompany the shipment with at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(h) The Contractor agrees to notify in writing the cognizant contract administration office immediately upon notification from the Contracting Officer that duty-free entry will be accorded (or, if the duty-free supplies were listed in the contract Schedule, upon award by the Contractor to the overseas supplier). The notice shall identify (1) the foreign supplies, (2) the country of origin, (3) the contract number, and (4) the scheduled delivery date(s).

(i) The Contractor agrees to insert the substance of this clause in any subcontract under which—

(1) There will be imported into the customs territory of the United States supplies identified in the Schedule as supplies to be accorded duty-free entry; or

(2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

(End of clause)

(R 7-104.31(a) 1971 FEB)

(R 7-104.31(b) 1971 FEB)

(R 7-2003.49 1965 DEC)

#### 52.225-11 Restrictions on Certain Foreign Purchases.

As prescribed in 25.704, insert the following clause in solicitations and contracts:

#### RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAY 1992)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract—

(1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba; or

(3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles.

(b) The Contractor shall not acquire for use in the performance of this contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

52.225-12—52.225-13 Reserved.

#### 52.225-14 Inconsistency Between English Version and Translation of Contract.

As prescribed at 25.902, insert the following clause:

#### INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (AUG 1989)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of clause)

#### 52.225-15 Buy American Act — Construction Materials under European Community and North American Free Trade Agreements.

As prescribed in 25.205(b), insert the following clause:

#### BUY AMERICAN ACT — CONSTRUCTION MATERIALS UNDER EUROPEAN COMMUNITY AND NORTH AMERICAN FREE TRADE AGREEMENTS (JAN 1994)

(a) *Definitions.* As used in this clause—

"Components" means those articles, materials, and supplies incorporated directly into construction materials.

"Construction material" means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are

produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

"Domestic construction material" means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

"European Community (EC) construction material" means a construction material that (a) is wholly the growth, product, or manufacture of an EC country or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in an EC country into a new and different construction material distinct from the materials from which it was transformed.

"EC country" means Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

"North American Free Trade Agreement (NAFTA) country" means Canada or Mexico.

"NAFTA country construction material" means a construction material that (a) is wholly the growth, product, or manufacture of a NAFTA country, or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EC and NAFTA construction materials are exempted from application of the Buy American Act.

(c) The Contractor agrees that only domestic construction materials, NAFTA country construction materials or EC construction materials will be used by the Contractor, subcontractors, materialmen and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

(End of clause)

#### 52.225-16 Buy American Act—Supplies under European Community Agreement Certificate.

As prescribed in 25.109(e), insert the following provision:  
52-118.2

#### BUY AMERICAN ACT—SUPPLIES UNDER EUROPEAN COMMUNITY AGREEMENT CERTIFICATE (MAY 1993)

The Offeror certifies that each end product, except those listed below is a domestic end product or a European Community (EC) end product (as defined in the clause entitled, Buy American Act—Supplies under European Community Agreement), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a European Community Country (as defined in the clause entitled, Buy American Act—Supplies Under European Community Agreement).

EXCLUDED END PRODUCTS	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

(List as necessary)

Offerors may obtain from the Contracting Officer lists of articles, materials, and supplies excepted from the Buy American Act.

(End of provision)

#### 52.225-17 Buy American Act — Supplies under European Community Agreement.

As prescribed in 25.109(f), insert the following clause :

#### BUY AMERICAN ACT — SUPPLIES UNDER EUROPEAN COMMUNITY AGREEMENT (JAN 1994)

(a) *Definitions.* As used in this clause—

"Components" means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product" means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components minded, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (c)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products" means those articles, materials, and supplies to be acquired for public use under this contract.

"European Community (EC) country" means Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

"EC end product" means an article that (a) is wholly the growth, product, or manufacture of an EC country, (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality has been substantially transformed into a new and different article of

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commerce with a name, character, or use distinct from that of the article or articles from it was so transformed. The term includes services (except transportation services) incidental to its supply; provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement provides that offers of EC end products will be evaluated without regard to the Buy American Act.

(c) The Contractor shall deliver only domestic end products or EC end products, except those—

(1) For use outside the United States;

(2) That the government determines are not mined, produced, or manufactured in the United States in sufficient, and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see section 25.105 of the Federal Acquisition Regulation).

(d) If this contract contains the clause at 52.225-21, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program, the Contractor may deliver NAFTA country end products, notwithstanding the prohibition in paragraph (c).

(End of clause)

#### 52.225-18 European Community Sanction for End Products.

As prescribed in 25.1003(a) insert the following clause:

##### EUROPEAN COMMUNITY SANCTION FOR END PRODUCTS (MAY 1993)

(a) *Definitions.* As used in this clause—

“Sanctioned European Community end product” means an article that (1) is wholly the growth, product or manufacture of a sanctioned member state of the EC, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentally, has been substantially transformed in a sanctioned EC country into a new and different article of commerce with a name, character or use distinct from that from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of these incidental services does not exceed that of the product itself. It does not include service contracts as such.

“Sanctioned member state of the EC” is any of the following countries: Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the

Netherlands, and the United Kingdom.

(b) *Agreement.* The Contractor agrees that no sanctioned EC end products will be delivered under this contract.

(End of clause)

#### 52.225-19 European Community Sanction for Services.

As prescribed in 25.1003(b), insert the following clause:

##### EUROPEAN COMMUNITY SANCTION FOR SERVICES (JAN 1994)

(a) *Definition.* “Sanctioned member state of the European Community (EC),” as used in this clause, is any of the following countries: Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom.

(b) *Agreement.* The Contractor agrees not to perform services under this contract in a sanctioned member state of the EC. This does not apply to subcontracts.

(End of clause)

#### 52.225-20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 25.408(a)(3), insert the following provision:

##### BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JAN 1994)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled “Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program”) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(b) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA coun-

try end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program:"

*(Insert line item numbers)*

(d) Offers will be evaluated in accordance with FAR Part 25.

*(End of provision)*

**52.225-21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.**

As prescribed in 25.408(a)(4), insert the following clause:

**BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT—BALANCE OF PAYMENTS PROGRAM (JAN 1994)**

(a) *Definitions.* As used in this clause—

"Components" means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product" means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

"End products" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"North American Free Trade Agreement" (NAFTA) country means Canada or Mexico.

"NAFTA country end product" means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) This clause implements the Buy American Act (41 U.S.C. 10), the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as NAFTA country end products.

(c) The Contracting Officer has determined that the NAFTA applies to this acquisition. Unless otherwise specified, the Act applies to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate." An offer certifying that a NAFTA country end product will be supplied requires the Contractor to supply a NAFTA country end product or, at the Contractor's option, a domestic end product.

(d) If this contract contains the clause at 52.225-17, Buy American Act - Supplies under European Community Agreement, the Contractor may deliver EC country end products notwithstanding the provisions of paragraph (c).

(e) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the Federal Acquisition Regulation.

*(End of clause)*

**52.226 Reserved.**

**52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.**

As prescribed in 26.104, insert the following clause:

# FAC 90-19 JANUARY 1, 1994

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																					
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	FP TR&M LH	LMV	COM SVC	DDR	A-E	FAC	IND DEL	TRN	SP	UTL SVC				
52.225-11 Restrictions on Certain Foreign Purchases.	25.704	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A					A			A	
52.225-12 Reserved.		P																								
52.225-13 Reserved.		C																								
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.902	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-15 Buy American Act — Construction Materials under European Community Agreement.	25.205(b)	C	Yes	I											A	A										
52.225-16 Buy American Act — Supplies under European Community Agreement Certificate.	25.109(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A												A
52.225-17 Buy American Act — Supplies under European Community Agreement.	25.109(f)	C	Yes	I	A	A	A	A	A	A	A	A	A	A												A
52.225-18 European Community Sanctions for End Products.	25.1003(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A												A
52.225-19 European Community Sanction for Services.	25.1003(b)	C	Yes	I					A	A							A		A							A
52.225-20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.	25.408(a)(3)	P	No	K	A	A	A	A	A	A	A	A	A	A												A
52.225-21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.	25.408(a)(4)	C	Yes	I	A	A	A	A	A	A	A	A	A	A												A
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

Provision or Clause	Prescribed In	P or C	IBR	UCF
52.223-1 Clean Air and Water Certification.	23.105(a)	P	No	K
52.223-2 Clean Air and Water.	23.105(b)	C	Yes	I
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I
52.223-4 Recovered Material Certification.	23.405	P	Yes	K
52.223-5 Certification Regarding A Drug-Free Workplace.	23.505(a)	P	Yes	K
52.223-6 Drug-Free Workplace.	23.505(c)	C	Yes	I
52.223-7 Notice of Radioactive Materials	23.602	C	No	I
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I
52.224-2 Privacy Act.	24.104(b)	C	Yes	I
52.225-1 Buy American Certificate.	25.109(a)	P	No	K
52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.	25.109(c)	P	Yes	L
52.225-3 Buy American Act—Supplies.	25.109(d)	C	Yes	I
52.225-4 Reserved.				
52.225-5 Buy American Act—Construction Materials.	25.205	C	Yes	—
52.225-6 Balance of Payments Program Certificate.	25.305(a)	P	No	K
52.225-7 Balance of Payments Program.	25.305(c)	C	Yes	I
52.225-8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.	25.407(a)(1)	P	No	K
52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.	25.407(a)(2)	C	Yes	I
52.225-10 Drug-Free Entry.	25.605(a)	C	Yes	I

[illegible]



Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																UTL SVC
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	COM LHMV	SVC	COM	DDR	A-E	FAC	IND DEL	TRN SP
52.227-1 Authorization and Consent.	27.201-2(a)	C	Yes	I	A	A			A		A	A			A		A	A	A	A	O
Alternate I	27.201-2(b)	C	Yes	I			A	A			A	A			A			A	A		
Alternate II	27.201-2(c)	C	Yes	I			A				A										
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.202-2	C	Yes	I	A	A	A	A	A			A						A		A	
52.227-3 Patent Indemnity.	27.203-1(b) 27.203-2(a) 27.203-4(a)(2)	C	Yes	I	A	A			A											A	
Alternate I	27.203-2(b)	C	Yes	I	A	A			A											A	
Alternate II	27.203-2(b)	C	Yes	I	A	A			A						A					A	
Alternate III	27.203-2(c)	C	Yes	I											A						A
52.227-4 Patent Indemnity—Construction Contract.	27.203-5	C	Yes	—					A		A	A					A				
Alternate I	27.203-5	C	Yes	—							O	O					O				
52.227-5 Waiver of Indemnity.	27.203-6	C	Yes	I	A	A	A	A	A	A	A	A					A		A	A	
52.227-6 Royalty Information.	27.204-2	P	No	K	A	A	A	A	A	A	A	A					A		A	A	
Alternate I	27.204-2	P	No	K													A		A		
52.227-7 Patents—Notice of Government Licenses.	27.204-3(c)	P	No	K	A	A	A	A	A	A	A	A					A		A	A	
52.227-8 Reserved.																					
52.227-9 Refund of Royalties.	27.206-2	C	Yes	I	A		A		A		A						A		A	A	



# **APPROVED INFORMATION COLLECTION REQUESTS AND CURRENT EXPIRATION DATES**

Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has obtained Office of Management and Budget (OMB) clearance of all information collection requirements contained in the FAR. In lieu of reissuing Standard and Optional Forms to reflect extended OMB approval dates, and to reduce costs of reprinting forms, we published a document at 58 FR 49477, September 23, 1993, to give notice of all information collection requests and their current expiration dates. FAR users should make appropriate pen-and-ink changes on any listed forms containing expiration dates that differ from the dates published below.

**TABLE OF STANDARD FORMS AND OMB EXPIRATION DATES**

	<u>Standard Form</u>	<u>Edition</u>	<u>OMB Control Number</u>	<u>Expiration Date</u>
1.	SF-24	Rev. 1/90	9000-0045	9/30/95
2.	SF-25	Rev. 1/90	9000-0045	9/30/95
3.	SF-25A	Rev. 1/90	9000-0045	9/30/95
4.	SF-25B	Rev. 10/83	9000-0045	9/30/95
5.	SF-28	Rev. 1/90	9000-0001	10/31/95
6.	SF-34	Rev. 1/90	9000-0045	9/30/95
7.	SF-35	Rev. 1/90	9000-0045	9/30/95
8.	SF-119	Rev. 1/90	9000-0003	9/30/95
9.	SF-129	Rev. 6/90	9000-0002	10/31/94
10.	SF-254	Rev. 11/92	9000-0004	3/31/96
11.	SF-255	Rev. 11/92	9000-0005	3/31/96
12.	SF-273	Rev. 8/90	9000-0045	9/30/95
13.	SF-274	Rev. 8/90	9000-0045	9/30/95
14.	SF-275	Rev. 8/90	9000-0045	9/30/95
15.	SF-294	Rev. 1/90	9000-0006	9/30/95
16.	SF-295	Rev. 1/90	9000-0007	9/30/95
17.	SF-1403	Rev. 9/88	9000-0011	10/31/94
18.	SF-1404	Rev. 9/88	9000-0011	10/31/94
19.	SF-1405	Rev. 9/88	9000-0011	10/31/94
20.	SF-1406	Rev. 9/88	9000-0011	10/31/94
21.	SF-1407	Rev. 9/88	9000-0011	10/31/94
22.	SF-1408	Rev. 9/88	9000-0011	10/31/94
23.	SF-1411	Rev. 7/87	9000-0013	3/31/96
24.	SF-1412	Rev. 4/93	9000-0013	3/31/96
25.	SF-1412A	Rev. 4/93	9000-0013	3/31/96
26.	SF-1413	Rev. 6/89	9000-0014	3/31/95
27.	SF-1416	Rev. 1/90	9000-0045	9/30/95
28.	SF-1417	Rev. 8/90	9000-0037	1/31/96
29.	SF-1423	Rev. 12/88	9000-0015	4/30/95

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	<u>Standard Form</u>	<u>Edition</u>	<u>OMB Control Number</u>	<u>Expiration Date</u>
30.	SF-1424	Rev. 7/89	9000-0015	4/30/95
31.	SF-1426	Rev. 7/89	9000-0015	4/30/95
32.	SF-1427	Rev. 7/89	9000-0015	4/30/95
33.	SF-1428	Rev. 7/89	9000-0015	4/30/95
34.	SF-1429	Rev. 7/89	9000-0015	4/30/95
35.	SF-1430	Rev. 7/89	9000-0015	4/30/95
36.	SF-1431	Rev. 7/89	9000-0015	4/30/95
37.	SF-1432	Rev. 7/89	9000-0015	4/30/95
38.	SF-1433	Rev. 7/89	9000-0015	4/30/95
39.	SF-1434	Rev. 7/89	9000-0015	4/30/95
40.	SF-1435	Rev. 7/89	9000-0012	5/31/95
41.	SF-1436	Rev. 7/89	9000-0012	5/31/95
42.	SF-1437	Rev. 7/89	9000-0012	5/31/95
43.	SF-1438	Rev. 7/89	9000-0012	5/31/95
44.	SF-1439	Rev. 7/89	9000-0012	5/31/95
45.	SF-1440	Rev. 7/89	9000-0012	5/31/95
46.	SF-1443	Rev. 10/82	9000-0010	8/31/96
47.	SF-1444	Rev. 10/87	9000-0089	2/28/96
48.	SF-1445	Rev. 10/87	9000-0089	2/28/96
49.	SF-1446	Rev. 10/87	9000-0089	2/28/96